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In the Supreme Court of the United States

OCTOBER TERM 1940

No. 815

THE SEMINOLE NATION, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (R. 12–14) is not reported.

JURISDICTION

The judgment of the Court of Claims was entered October 7, 1940 (R. 14). A motion for new trial was denied January 6, 1941 (R. 15). Petition for writ of certiorari was filed March 6, 1941. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 23, 1925, as amended by the Act of May 22, 1939.

QUESTION PRESENTED

Whether the confirmation by Congress, exercising the power of the United States as guardian, of a resolution of the Seminole General Council ratifying a sale of tribal property rendered the United States liable to the Seminole Nation for the value of the property.

STATUTE INVOLVED

The pertinent provision of the Act of March 3, 1905, c. 1479, 33 Stat. 1048, 1068, is set forth in the Statement (p. 3, *infra*).

STATEMENT

Petitioner's amended petition in the Court of Claims sought to recover the "true value" of the Wewoka townsite at the time of an alleged taking by the United States, together with five percent interest from that time to the date of judgment (R. 1–5).

The relevant facts, as found by the Court of Claims (R. 10–12), may be summarized as follows:

An Act of the Seminole General Council passed April 23, 1897, appointed five commissioners to select a townsite, to subdivide the same, and to lease or sell the lots (R. 10). The tribal act provided that:

> * * * no transfer of the title of lots shall be made * * * except upon the condition that * * * valuable improvements shall be erected thereon within six months from

> date of * * * purchase * * *. *Provided,* That said Commissioners may in their discretion, for good cause shown, extend the time for the completion of such improvements (R. 11).

The commissioners selected the Wewoka townsite and platted it into 4,234 lots (R. 10). In accordance with the Act, 1,102 of the lots were conveyed to A. J. Brown (R. 10–11). Seven other lots were sold. February 12, 1900, John F. Brown, petitioner's principal chief, offered to purchase the remaining lots for $12,000. The commission accepted the offer and executed to Brown a deed which provided that "for good cause shown to us [the commissioners] no definite time is named within which buildings or improvements shall be placed on said lots, and the [time] is hereby indefinitely extended" (R. 11). On April 18, 1900, the Seminole General Council passed a resolution ratifying the sale (R. 11).

The Act of March 3, 1905, c. 1479, 33 Stat. 1048, 1068, provided in part:

> That the resolutions of the Seminole council * * * accepting and ratifying the contract and sale made by the Seminole town-site commissioners to John F. Brown, of the unsold lots in the town of Wewoka, Indian Territory, for the sum of twelve thousand dollars, and also providing for the distribution of the said money among the Seminole people per capita, be, and the same is hereby, ratified and confirmed (R. 11).

At the time, Congress had before it opinions of the Secretary of the Interior, the Commissioner of Indian Affairs, and the Assistant Attorney General for the Department of the Interior that the sale was illegal. On that ground, the Secretary and the Commissioner recommended against passage of the ratifying legislation. However, none of these officers based his opinion upon a lack of good faith in the sale (R. 11–12).

June 6, 1901, the lots were conveyed to a company which was principally owned by John F. Brown and A. J. Brown. This company sold "all or a part of these lots at an average price of from $80.00 to $200.00 a lot" (R. 12).

Upon these facts, the Court of Claims held that petitioner was not entitled to recover (R. 12) and dismissed the petition (R. 14).

ARGUMENT

As the Court of Claims held (R. 12), the sale to John F. Brown was not in accordance with the tribal act of April 23, 1897, in that Brown was relieved of the requirement to place improvements on the lots within six months of purchase.[1] However, the Seminole General Council—which had enacted

[1] Throughout the petition (see e. g., pp. 10, 13, 15, 18, 19, 22, 24), petitioner intimates that the earlier conveyance to A. J. Brown of 1,102 lots is also here involved. There is no basis for the intimation. As the Court of Claims found (R. 10–11), that conveyance was in accordance with the tribal act. Moreover, Congress confirmed only the tribal resolution which ratified the sale to John F. Brown.

the tribal act—ratified the sale (R. 11) and by the Act approved March 3, 1905, c. 1479, 33 Stat. 1048, 1068, Congress confirmed the action of the tribal council. Petitioner apparently contends (pp. 18–22) that the sale to Brown was not merely defective under the tribal act but was fraudulent, that Congress knew that the sale was fraudulent, and that by ratifying the sale Congress therefore took the lands by eminent domain, so that the United States is liable to pay petitioner "just compensation."

1. The court below did not find that the sale was fraudulent as between Brown and petitioner, and petitioner apparently does not complain of its failure to so find. It is not even clear just what petitioner means by its charge of fraud. It may be that the charge is based entirely on the assumption that Brown paid less than the value of the lands (see e. g., pp. 2, 10, 13, 14, 15, 18, 19, 22, 23), since otherwise the tribe was not injured by the sale. However, there is no finding that the purchase price was less than the fair market value. Nor does petitioner assert (see pp. 8–10) that, in failing so to find, the Court of Claims erred. Thus, it is evident that there is no support in the record for petitioner's contention.

Moreover, even if the sale was "fraudulent" as between Brown and petitioner, the Court of Claims did not find that Congress was so informed when it passed the ratifying act; to the contrary the court found that none of the documents before Congress

expressing the view that the sale was illegal went upon the ground of fraud, and that only one of them expressed doubt that the sale was in good faith (R. 11–12). Petitioner does not attack this finding. It merely asserts, without warrant, that Congress acted "with full knowledge of the facts" (Pet. p. 2. See also pp. 8, 10, 19, 20, 22, 23).

2. Even if petitioner's version of the facts were sustained by the record, it would not tend to show that the Court of Claims erred. Petitioner apparently conceives (pp. 10, 16, 19, 20) that the United States is confined in its guardianship to action advantageous to the tribe and that the wisdom of its action can be reexamined in the Court of Claims. But as petitioner's guardian the United States had plenary power over the tribal property, and the exercise by Congress of that power is not subject to judicial review. *Klamath Indians* v. *United States,* 296 U. S. 244, 252–253, 254–255; *Lone Wolf* v. *Hitchcock,* 187 U. S. 553, 567–568; *Cherokee Nation* v. *Hitchcock,* 187 U. S. 294, 306–308.

This is not an instance in which the United States, departing from the role of guardian, has treated tribal property as government property. *Lane* v. *Pueblo of Santa Rosa,* 249 U. S. 110, 113. In such case, the United States assumes an obligation to make just compensation whether it appropriates the property for itself, *United States* v. *Mille Lac Chippewas,* 229 U. S. 498, 509–510, or for others. *United States* v. *Creek Nation,* 295 U. S.

103, 110–111; *Shoshone Tribe* v. *United States*, 299 U. S. 476, 495; *United States* v. *Klamath Indians*, 304 U. S. 119, 123. In confirming tribal ratification of the sale to Brown, on the other hand, Congress did not purport to treat the lands as its own. Hence its action did not constitute a taking of the lands sold, and the United States is not accountable to petitioner.

CONCLUSION

The decision of the court below is correct and presents no conflict of decisions or question of general importance. Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted.

FRANCIS BIDDLE,
Solicitor General.

APRIL 1941.

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